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No. 92-2055

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

COCA-COLA BOTTLING COMPANY
OF SHREVEPORT, INC., *et al.*,
Petitioners,

v.

THE COCA-COLA COMPANY,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF IN OPPOSITION

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June 28, 1993

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QUESTION PRESENTED

Did the Court of Appeals correctly interpret the language of Petitioners' Rule 36 requests for admission and The Coca-Cola Company's responses to those requests.

LIST OF PARTIES

Petitioners:

Arkansas-Georgia Company, Inc.
Central Coca-Cola Bottling Company, Inc.
Coca-Cola Bottling Company of Dickinson
Coca-Cola Bottling Company of Elizabethtown, Inc.
Coca-Cola Bottling Company of Lacrosse, Inc.
Coca-Cola Bottling Company of Shreveport, Inc.
Las Cruces Coca-Cola Bottling Company
Love Coca-Cola Bottling Company
Magnolia Coca-Cola Bottling Company
Marshall Coca-Cola Bottling Company
Natchez Coca-Cola Bottling Co., Inc.
Plymouth Coca-Cola Bottling Co., Inc.
Sacramento Coca-Cola Bottling Co., Inc.
Coca-Cola Bottling Company (San Angelo)
Coca-Cola Bottling Company of Shelbyville, Inc.
The Coca-Cola Bottling Company of Tucson, Inc.
Coca-Cola Bottling Company of Tulsa, Inc.
Coca-Cola Bottling Company of Williston
Oliver C. Hutaff, Jr., as Trustee under Shareholders' Lawsuit Trust Agreement (Subst. for Wilmington Coca-Cola Bottling Works, Inc. and Kelford Coca-Cola Bottling Works, Inc.)

Respondent:

The Coca-Cola Company

RULE 29.1 STATEMENT

Pursuant to Rule 29.1 of the Rules of this Court, the following is a list of affiliated corporate entities of the Respondent:

Montevideo Refrescos, S.A.

INTI S.A. Industrial y Comercial

Coca-Cola Amatil Limited

CC Amatil Investments C.V.

C-C Bottlers Ltd.

Olympus Industries, Inc.

Oasis Enterprises Ltd.

P.T. Coca-Cola Tirtalina Bottling Company

P.T. Coca-Cola Banyu Argo

P.T. Coca-Cola Pan Java Bottling Company

P.T. Coca-Cola Kendali Soto

H. & J. Schmitz G.m.b.h. & Co. KG

Respondent has ten additional foreign non-wholly owned subsidiaries.

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BRIEF IN OPPOSITION

Respondent The Coca-Cola Company ("Coca-Cola") respectfully opposes the Petition for Writ of Certiorari filed by the Coca-Cola Bottling Company of Shreveport, Inc., *et al.* (the "Petitioners").

STATEMENT OF THE CASE

This diversity case is a contractual dispute between Coca-Cola and a small group of bottlers concerning whether diet Coke is covered by the original 1921 Coca-Cola bottle contract. The District Court found that the language of the bottle contract was ambiguous and conducted a bench trial to find the intent of the parties. Following traditional principles of contract interpretation,

the District Court examined the language of the bottle contract, reviewed the parties' course of performance over many decades, heard live testimony, and considered voluminous other evidence, while giving conclusive effect to the admissions of fact made by Coca-Cola in pretrial proceedings. After this fact intensive inquiry, the District Court rendered detailed findings of fact and conclusions of law, holding, *inter alia*, "that plaintiffs have not shown by a preponderance of the evidence that the [Coca-Cola] Company breached the unamended contracts. . . ." (Petition Appendix ("App.") 141a). The Third Circuit (Hutchinson, Alito and Higginbotham) reviewed the District Court's findings under the clearly erroneous rule and affirmed unanimously. Petitioners sought rehearing and rehearing *en banc*, which was denied.

Coca-Cola subscribes neither to Petitioners' characterization of the facts in this case nor to their paraphrase of Coca-Cola's admissions.[1] The Court of Appeals' opinion provides a full and fair statement of the case. (App. 1a-48a). Coca-Cola's admissions are considered and analyzed fully in the part of the Court of Appeals' opinion reprinted at pages 26a-35a of the Petition Appendix.

This case raises no issue of concern to anyone other than the immediate parties to this particular commercial contract. Petitioners simply disagree with the factual findings of the District Court, which they ask this Court to review notwithstanding a unanimous affirmance by the Court of Appeals.

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[1] Most of the quotations Petitioners cite are taken from pretrial opinions issued by a predecessor district judge who became ill and never rendered a final decision. The Court of Appeals characterized segments of these pretrial rulings as "dicta." (App. 37a).

REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW IS FACT SPECIFIC AND DOES NOT PRESENT A CERTWORTHY QUESTION UNDER RULE 10.1(c).

The meaning of Coca-Cola's responses to Petitioners' requests for admission depends entirely upon the language of the specific discovery documents in this case. Like a question of contract interpretation, interpretation of discovery responses is a particularized inquiry. In this case, Petitioners misconstrue Coca-Cola's limited admissions with respect to four specific products as a blanket concession that the bottle contracts necessarily include all sugar-free syrups. (Petition at 10, 20, 23). The record shows, however, that Coca-Cola admitted only the contractual coverage of certain specific high caloric, fructose-sweetened syrups, none of which were at issue in the litigation. (App. 227a-228a).

The interpretation of fact specific discovery responses is the common grist of the district courts' daily grind, and such findings are subject to review by the Courts of Appeals under the clearly erroneous rule. While important to individual litigants in particular cases, the interpretation of individual discovery responses is not a matter of general importance in the development of federal law.

Neither the District Court nor the Court of Appeals purported to undertake any new analysis or unusual application of Rule 36 in this case. To the contrary, the Court of Appeals accepted the conclusive finality of Coca-Cola's admissions under Rule 36 and adopted those admissions precisely as they were written. (App. 28a-35a). This case involves a straightforward determination of the intent of the contracting parties in the light of all the evidence. Petitioners simply failed to carry their burden of proof at trial. There is no significant issue of federal law at stake here.

II. THE COURT OF APPEALS' DECISION PRESENTS NO CONFLICT REQUIRING REVIEW UNDER RULE 10.1(a).

The Third Circuit is rigorous and unstinting in its enforcement of the conclusive effect of Rule 36 admissions. *See Langer v. Monarch Life Ins. Co.*, 966 F.2d 786, 802-807 (3d Cir. 1992) (Rule 36 admissions are conclusive of matters actually admitted); *Anchorage Assocs. v. Virgin Islands Bd. of Tax Review*, 922 F.2d 168, 176 n.7 (3d Cir. 1990) (Rule 36 admissions are sufficient to support summary judgment); *Airco Indus. Gases, Inc. v. Teamsters Health and Welfare Pension Fund*, 850 F.2d 1028, 1037 (3d Cir. 1988) (Admission under Rule 36 is an "unassailable statement of fact that narrows the triable issues in the case"). The panel opinion applied these principles in the case at bar (App. 31a-32a), and accepted Coca-Cola's Rule 36 admissions as written. There is no conflict between the decisions of the Third Circuit and authorities such as *American Automobile Association v. AAA Legal Clinic of Jefferson Crooke*, 930 F.2d 1117 (5th Cir. 1991) and *Brook Village North Associates v. General Electric Co.*, 686 F.2d 66 (1st Cir. 1982). Like the Fifth and First Circuits, the Third Circuit has readily reversed district court findings that contradict specific, unequivocal admissions. *Airco Indus. Gases, Inc. v. Teamsters Health and Welfare Pension Fund, supra.*

Consistent with these authorities, the Court of Appeals, like the District Court, considered Coca-Cola's admissions as conclusive of the specific facts admitted by Coca-Cola, *i.e.*, that certain specific high-caloric products sweetened with high fructose corn sweetener are covered by the 1921 contracts. (App. 29a). Coca-Cola's admissions as to those particular high-caloric products did not, however, determine the contractual coverage of a diet product, like diet Coke, which was not referred to in Petitioners' requests or Coca-Cola's responses. (App. 30a-31a). The intent of the parties concerning the contractual coverage of diet

Coke is a separate factual issue on which Petitioners failed to carry their burden of proof. Petitioners' flawed logic was obvious to both the District Court (App. 130a-131a) and the Court of Appeals (App. 30a-31a), and merits no further review by this Court.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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